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Attorney Docket No. 22847.00

Customer No. 37833

Confirmation No. 3585

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN THE PATENT APPLICATION OF

APPLICANT : **REBECCA A. HEILMAN *et al.***

APPL. NO. : **10/611,964**

ART UNIT : **3721**

FILED : **July 3, 2003**

EXAMINER : **C. HARMON**

FOR : **AUTOMATIC UTENSIL WRAPPING MACHINE**

MAIL STOP NON-FEE RESPONSE

COMMISSIONER FOR PATENTS

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RESPONSE TO ELECTION REQUIREMENT

Sir:

In the Office action dated June 10, 2004, the Examiner required restriction under 35 U.S.C. § 121 prior to an examination on the merits of the above-identified application. The separate inventions as identified by the Examiner are as follows:

Group I : Claims 1-13, drawn to an apparatus for wrapping utensils.

Group II : Claims 14-18, drawn to a method for wrapping utensils.

Application No. : 10/611,964
Art Unit : 3721

Attorney Docket No. 22847.00
Confirmation No. 3585

The Examiner states that the inventions of Groups I and II are related as process and apparatus for its practice. In order to establish that the separate inventions of Groups I and II are distinct, the Examiner asserts that the method of Group II can be practiced with a apparatus materially different from that of Group I, such as "one without conveyor belts or multiple separate stations."

In compliance with the Examiner's restriction requirement, Applicants provisionally elect with traverse for further prosecution the apparatus defined by Claims 1-13 (designated as Group "I").

Notwithstanding the propriety of the election requirement for examination purposes, Applicants contend that the restriction requirement is improper since the process *as claimed* can not be practiced by the apparatus suggested by the Examiner. The method steps of Claim 14 require a napkin lifting station and a napkin wrapping station, which are multiple separate stations, and Claim 15 requires the use of a conveyor belt. Thus, it is unclear how the method steps of Claims 14-18 could be preformed with an apparatus without conveyor belts or multiple separate stations as asserted by the Examiner. Applicants respectfully submit that the Examiner has failed to meet the criteria for distinctness as set forth in MPEP 806.05(e).

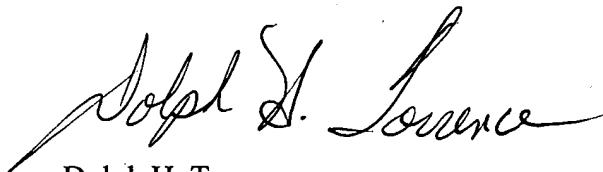
Moreover, it would appear that a search and examination of the entire application can be conducted without a serious burden on the Office. The Examiner has indicated that both Groups I and II are classified in the same class of class 53. Further, it is Applicants' position that a proper search of the apparatus as claimed in Claims 1-13 would also require a search in subclass 397.

Application No. : 10/611,964
Art Unit : 3721

Attorney Docket No. 22847.00
Confirmation No. 3585

Therefore, it is respectfully requested that the Examiner withdraw the restriction requirement and issue an action on the merits of the claimed embodiments presently in the application. Alternatively, should the Examiner maintain the requirement, Applicant awaits a complete action on the merits of the elected subject matter.

Respectfully submitted,



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